

## Azevedo, George

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**From:** Pierard, Kevin  
**Sent:** Wednesday, March 20, 2013 10:53 AM  
**To:** Azevedo, George  
**Subject:** FW: DUE WEDNESDAY WISCONSIN IMPASSE ITEMS

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**From:** Kevin Pierard [mailto:Pierard.Kevin@epamail.epa.gov]  
**Sent:** Wednesday, March 20, 2013 10:48 AM  
**To:** Pierard, Kevin  
**Subject:** Fw: DUE WEDNESDAY WISCONSIN IMPASSE ITEMS

----- Forwarded by Kevin Pierard/R5/USEPA/US on 03/20/2013 10:47 AM -----

From: George Azevedo/R5/USEPA/US  
To: Kevin Pierard/R5/USEPA/US@EPA  
Cc: Bob Newport/R5/USEPA/US@EPA, Gary Prichard/R5/USEPA/US@EPA, John Wiemhoff/R5/USEPA/US@EPA, Stephen Jann/R5/USEPA/US@EPA  
Date: 09/26/2012 01:32 PM  
Subject: Re: DUE WEDNESDAY WISCONSIN IMPASSE ITEMS

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This is my summary for water quality trading items based on my review of WDNR's proposed water quality trading framework in the Summer 2011. The two items of concern are:

- Timing of credit generation and purchase. WDNR wants to "bank" pollution credits developed in the growing season for use in other months. For example, July pollution credits could be used to meet monthly permit limits in December and January. EPA trading policy prohibits the use of vintage credits. EPA policy and communication to WDNR has been clear: credits need to be used at the time of generation.
- WDNR wants to allow nonpoint sources in TMDL waters to generate credits before achieving the load allocation goal. Based on this concern I have proposed the tracking of BMPs and pollution offsets established by 319 and trading monies, respectively, in an accounting system. OWM has concerns with this item not only in Wisconsin, but elsewhere in the nation. OWM concerns are not only based on the timing of nonpoint credit generation, but in CWA goals, which prohibit the potential for increased pollution loads in a trading program.
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I communicated both of these items to WDNR staff in July 2011.

Thank you, George.

Kevin Pierard---09/24/2012 01:56:41 PM---Tinka and Tim will be meeting with DNR (Russ and Ken) on Oct 3 on topics where DNR believes we have

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From: Kevin Pierard/R5/USEPA/US  
To: Stephen Jann/R5/USEPA/US@EPA, John Wiemhoff/R5/USEPA/US@EPA, Bob Newport/R5/USEPA/US@EPA, George Azevedo/R5/USEPA/US@EPA, Gary Prichard/R5/USEPA/US@EPA  
Date: 09/24/2012 01:56 PM  
Subject: DUE WEDNESDAY WISCONSIN IMPASSE ITEMS

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Tinka and Tim will be meeting with DNR (Russ and Ken) on Oct 3 on topics where DNR believes we have reached an

impasse. These include:

Water Quality Trading – continue our previous telephone discussion for the benefit of Tinka and Ken I am uncertain what this may be in regard to, it may be a problem where a TMDL has been completed vs waters that are impaired with no TMDL.

- Incorporating phosphorus water quality options (i.e., adaptive management and trading) into permits – our respective staffs have reached an impasse on this. This is ours for sure, the Domtar schedule is an example. I believed we had gotten agreement on most everything with the exception of the need to modify the permit if the permittee desires to implement an adaptive management plan. DNR did not seem willing to modify permits citing workload issues.
- MMSD permit issues – another impasse – see attached email for background (EPA initial comments in black, our response in red, reply EPA comments in blue) Not sure if we have been able to reduce the list of items. I think we may be close on a few.
- SSO Rule comments – we are expecting an analysis from Susan Sylvester next week – will share it when we get it. **I hope that we get this analysis.**

I would like **Bob** to summarize issues and positions remaining on MMSD; **John** to summarize issues on the SSO rule; and **George and Steve** to summarize the phosphorus "options" in permits. George - if you have any insights on what DNR may be thinking on the trading item in the first bullet please include something on that. **Gary** has been involved in most of these topics so please work with him as you draft your summaries.

Please be as concise as possible, this summary will only go to Tim and Tinka. We will be providing a briefing for them prior to the 3rd and possibly as soon as Thursday. Please have your individual **input to my by Wednesday.**

----- Forwarded by Kevin Pierard/R5/USEPA/US on 09/24/2012 01:31 PM -----

From: Timothy Henry/R5/USEPA/US  
To: [Pierard.Kevin@epa.gov](mailto:Pierard.Kevin@epa.gov)  
Date: 09/24/2012 01:26 PM  
Subject: Fw: October 3 Meeting

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per our discussion

Timothy C. Henry  
Associate Director, Water Division  
U.S. EPA (W-15J)  
77 W. Jackson Blvd., Chicago, IL 60604-3590  
Phone: 312.886.6107 Fax: 312.692.2578

----- Forwarded by Timothy Henry/R5/USEPA/US on 09/24/2012 01:25 PM -----

From: "Rasmussen, Russell A - DNR" <[Russell.Rasmussen@Wisconsin.gov](mailto:Russell.Rasmussen@Wisconsin.gov)>  
To: Timothy Henry/R5/USEPA/US@EPA,  
Cc: Tinka Hyde/R5/USEPA/US@EPA, "Johnson, Kenneth G - DNR" <[Kenneth.Johnson@Wisconsin.gov](mailto:Kenneth.Johnson@Wisconsin.gov)>  
Date: 09/21/2012 12:47 PM  
Subject: RE: October 3 Meeting

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Hi Tim,

Thanks for the message. I've been meaning to send you something like this and this is the impetus to get me going.

First, Ken and I are hoping that it will just be the four of us. We are not planning on bringing anyone else unless you are. That may mean that we each will need to come back and confer with staff on some points, but if it is just us, we think it will result in a more frank and productive discussion.

The topics we have in mind are below. If we don't get to all of them so be it, but if we have time it would be good to at least touch on them. If you have others or would like to tweak any of them, let us know.

- 303(d) list – you have our letter which should frame the discussion
- Water Quality Trading – continue our previous telephone discussion for the benefit of Tinka and Ken
- Incorporating phosphorus water quality options (i.e., adaptive management and trading) into permits – our respective staffs have reached an impasse on this
- MMSD permit issues – another impasse – see attached email for background (EPA initial comments in black, our response in red, reply EPA comments in blue)
- SSO Rule comments – we are expecting an analysis from Susan Sylvester next week – will share it when we get it
- Nitrogen Criteria Timeline
- TMDL implementation conflicting with watershed permit approach in the Menomonee River Watershed
- Enforcement approach – our stakeholders complain we are too strict and EPA complains we are too lenient

I know this is a long list, but it has grown since we first envisioned this meeting. We would ask to cover what we can and tee the rest up for future discussion as necessary.

Thanks again Tim, hope this helps,

Russ

 *Russell Rasmussen*

Deputy Administrator

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**From:** Timothy Henry [<mailto:Henry.Timothy@epamail.epa.gov>]

**Sent:** Friday, September 21, 2012 11:53 AM

**To:** Rasmussen, Russell A - DNR

**Cc:** Hyde, Tinka

**Subject:** October 3 Meeting

Russ -

We are scheduled to meet with you and Ken on October 3 regarding issues associated with the 2012 303(d) list. I just heard that other topics might also be added, for example modification of permits. Can we get a full list of the matters you

and Ken would like to discuss? Also, we are of the understanding that this is a meeting of the four of us: Ken, you, Tinka and me. Will you be bringing other managers or staff? Please let us know as soon as possible so we can make appropriate arrangements.

Thanks, Tim

Timothy C. Henry  
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Phone: 312.886.6107 Fax: 312.692.2578

- 0500- 14:30:54 2012Sep 20 ,uon Th <gov.wisconsin@Bosch.Theodore> "DNR -Theodore J ,Bosch"Message from -----

issell A ,Rasmussen" ,<gov.Wisconsin@Ratarasarn.Theera> "DNR -Theera T ,Ratarasarn" :To  
onsin@Sylvester.Susan> "DNR -Susan ,Sylvester" ,<gov.Wisconsin@Rasmussen.Russell> :To

MMSD Permit :FW:Subject

[gov.epa.epamail@Bob.Newport:mailto] Bob Newport :From  
PM 2:09 2012 ,20September ,Thursday :Sent  
DNR -Theodore J ,Bosch :To  
MMSD Permit :RE :Subject

Hi Ted

I .day today is shown below in blue-Where we are on the issues as of mid .Thanks for sending the updated draft permit  
t think we are going to be able to issue the permit by the end of September as the variance action will not be 'dont  
ll call 'I .ticket issues where EPA and DNR are not fully reconciled-and there are still a couple of big ,completed by then  
.but wanted to give you updates on where we are with the issues ,also this afternoon

.Your hard work on this and patience are very much appreciated

Bob Newport

<gov.wisconsin@Bosch.Theodore> "DNR -Theodore J ,Bosch" :From  
,EPA@US/USEPA/5R/Bob Newport :To  
,Mugan" ,<gov.Wisconsin@Ratarasarn.Theera> "DNR -Theera T ,Ratarasarn" ,<gov.Wisconsin@Rasmussen.Russell> "DNR -Russell A ,Rasmussen" :Cc  
"DNR -Lloyd L ,Eagan" ,<gov.isconsinW@Sylvester.Susan> "DNR -Susan ,Sylvester" ,<gov.Wisconsin@Mugan.Tom> "DNR -Tom J  
,<com.mmsd@SAnthony> "(com.mmsd@SAnthony) Susan Anthony" ,<gov.Wisconsin@Luba.Michael> "DNR -Michael A ,Luba" ,<gov.Wisconsin@Eagan.Lloyd>  
<gov.wisconsin@Fratrik.Jackie> "DNR -Jackie A ,Fratrik"

AM 09:13 2012/19/09 :Date

MMSD Permit :RE :Subject

.Here are revisions to the permit and notice of final determination along with some answers to your questions  
.that is where I made changes ,To expedite your review you may want to focus on the following sections of the permit

4.1

6.3.1.3

6.3.4

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[gov.epa.epamail@Bob.Newport:mailto] Bob Newport :From  
 PM 1:08 2012 ,17September ,Monday :Sent  
 DNR -Theodore J ,Bosch :To  
 MMSD Permit :Re :Subject

Hi Ted

Here is the revised list of issues we will .eement with my list of remaining issuesNot all the managers here were in agr  
 .want to discuss and work through

.Sorry this is such a laborious process

Bob Newport  
 EPA

ion of the permit does not specifically sect (SSO)The language in the Separate Sanitary Sewer Overflow .1  
 or in 5We believe it would be acceptable to include a sentence to this effect in either Section .prohibit SSOs  
 zed Overflows of wastewater from separate sanitary sewer systems are not authori" :the standard conditions  
 We see this an .has been revised 10The language in section ?Would that work for WDNR ".under this permit  
 except we think it is necessary to include an additional statement ,acceptable way to handle the SSO prohibition  
 after the bullet points on when WDNR will not pursue enforcement for bypasses immediately 10.2.6in Section  
 criteria do not impact on actions of esehT" ,The language should be something to the effect of .or overflows  
 ".Environmental Protection Agency or the public .S.the U

10.2.6be removed from standard condition "or overflow"We see it as being necessary that the words .2  
 (CSO)The wording as is would seem to prohibit the Combined Sewer Overflow .(the bypass condition)  
 the language in the standard condition may be interpreted as ,In addition .discharges from the diversion channel  
 .See above .is revised 10.2.6The language in .permitting SSOs under certain circumstances

the ,however ;tL limit for mercury for the Jones Island plan/ng 6.4The revised draft permit includes a .3  
 The proposed limit is greater than .draft Notice of Final Determination does not explain the basis for the limit  
 we are unclear as to why there is no mercury effluent limit for the South ,Also .L wildlife criterion/ng 1.3the  
 The .Of course the permit action needs to be coordinated with the pending variance request .rgeShore discha  
 .(5)106.145in conformance with NR ,of mercury data 99day P-1based on the ,limit for JI is an alternate limit  
 rminationThis has been added to the notice of final dete

Part ,CFR 40There is no limit for South Shore because the elimination of the mixing zone has been waived per  
 The .is less than the limit is the mixing zone is retained 99day P-30and the ,6C3Procedure ,Appendix F ,132  
 which satisfies the conditions of NR ,ance schedule for mercury pollutant minimizationpermit includes a compli  
 This is further explained in .(for South Shore)Appendix F ,132Part ,CFR 40and ,(for Jones Island) (4)106.145  
 We are checking with technical staff .o the fact sheetthe Mixing zone phase out exemption which was attached t  
 Our water quality branch tells me the variance determination will be made by .here on the Hg requirements  
 .29October

EPA understands the .or South ShoreEPA remains concerned that there is no final effluent limit for P f .4  
 and ,analysis has not been performed (RP)argument that WDNR has put forward that a Reasonable Potential  
 upon model or method for evaluating -the State contents it cannot perform a RP analysis until there is an agreed  
 an alternative view is there clearly is reasonable potential that the ,However .scharges directly into the Lakedi

given the volume of the discharge and the low phosphorus, discharge could affect Lake water quality requires that a limit be 217It is our view that NR ion in the Lake concentration that is the applicable criterion which was 1 in the permit /mg 0.6One possible idea would be to include a final limit of .included in the permit 0.6The final effluent limit of " :6.3.1.3and with language something like this in Section (in the original draft of the .91 becomes effective according to the phosphorus compliance schedule included in section /mg The phosphorus compliance schedule designates a final .compliance schedules section of this permit .e beyond the term of this permit and is therefore not enforceable during the term of this permitcompliance dat model for evaluating discharges of phosphorus directly into the Great /The Department is developing a method t may be modified via a permit modification or permit reissuance The final limit for the South Shore plan .Lakes .model is developed /after the method

so there ,the P standard that applies under the regulations (in open water)Lake Michigan is currently meeting A better interpretation is that a limit is required .uality based effluent limitis no basis on which to impose a water q Any calculations to determine cause or contributing to must be based on an .only when all background information is available -rule does not preclude the technology 217The NR .acceptable near shore model which we agree does not exist at this time The best approach to address phosphorus at South Shore is to .based limit if it is protective of water quality shore When a near .keep the technology based limit and optimize the existing facility to remove phosphorus At .model is developed the permit may be modified to incorporate a compliance schedule to achieve that limit is we 0.6One way to justify the .l is only a guess of what the final limit may be/mg0.6this time a final limit of So we would be treating Jones .0.6which translates to a monthly limit of 0.22r JI of month average fo-6have our quick review of effluent data shows South Shore is already meeting .Also .Island and South Shore equally There .ld be for saying this number is inappropriate basis wou'so it is hard to see what MMSD ,number 0.6the but at this point the EPA perspective is EPA would like ,DNR top management/may need to be a call with EPA .to see a final WQBEL number in the permit

improvement to the permit to include a requirement for optimizing it is a good i ,6.3.1.3Also in Section .5 but the wording will be difficult ,phosphorus reductions during the interim period until the final limit is in effect The permittee shall " :ollowingWe recommend alternative language something like the f ,to enforce as is and the effluent ,document operational methods to optimize phosphorus removal at the South Shore plant concentrations that can be consistently achieved with optimized operations with the existing facilities and identifying the lowest 2013 ,31report shall be submitted to the Department by March A .equipment In no case can the .concentration of phosphorus the plant can consistently achieve with the existing equipment 1.0phorus discharge concentration greater than report recommend operational methods that result in a phos operate the South Shore plant in conformance 2013 ,1The permittee shall beginning no later than October .l/mg here is a T ".with the methods documented in the report to achieve the optimal level of phosphorus removal .except it could be better to give a deadline for when the report is due ,OK .6.3.1.3wording change in

after the model or method for Lake discharges is completed ,With regard to the P limit for Jones Island .6 This is necessary to confirm the .he TMDL limit for Jones Island using the Lake modelcheck t-we should cross Perhaps this .TMDL limit for the discharge at the mouth of the River is sufficiently protective of the Lake is appropriate to address this when the TMDL is It .should be mentioned in the Notice of Final Determination OK .completed and the permit is being modified to address the final P limit

which would have ,4.10language in Section "endeavor to"We appreciate that WDNR has removed the .7 EPA is of ,With regard how the green infrastructure requirement is worded .enforceablemade that provision un million 1the view that the existing language could be read that the District does not need to implement and in each ,2013In calendar year " :re like thisWe would like to see language mo .additional gallons each year must ensure ,working with partners as appropriate ,the permittee ,calendar year thereafter during the permit term The .reacontrol measures are put in place in the MMSD service a/tha that green infrastructure practices 1must cumulatively have a design retention capacity of at least 2103control measures put in place in /practices million gallons of 1and each following calendar year during the permit term an additional ,million gallons

million gallons of capacity is put in place in 1 If more than .acity must be put in placegreen infrastructure cap  
million gallons may be counted toward the requirement for subsequent 1one year the incremental amount over  
it is just how it ,hat we want the requirement to beNote I think we are all on the same page as to w ".years  
has been changed to incorporate this wording with the exception that 4.1Section .should best be worded  
but we suspect ,EPA would be OK with the wording as is .2012MMSD may take credit for work done in  
.2012million gallon requirement in calendar year 1MMSD will not be as this wording seems to start up the  
We would be .completed %75is 2012since ,2013We assumed the requirement would start up in calendar year  
.2012ts undertaken in the second half of for projec 2013OK with giving credit in

EPA is of the view that the GreenSeams language is being separate ,4.10Also with regard to Section .8  
the permit The green infrastructure that will be put in place under .from the green infrastructure commitment  
The GreenSeams program sets .will help reduce flows into the sewer system and thereby help to reduce CSOs  
We do not .but does not help reduce CSOs ,aside land upstream of the sewer system and helps prevent flooding  
This is a .ount GreenSeams acquisitions toward the green infrastructure commitmentthink it is appropriate to c  
The reason MMSD does flood management is to .pstream improvement will reduce floodingU .deal killer  
s the sanitary sewer system with bank flooding which floods basements and then overwhelm-of-prevent out  
-of-If out .both combined and separated ,.e.i ,MMSD has an integrated system .flood water from basements  
Greenseams® parcels do ,Therefore .bank flooding gets into any structure it can cause either an SSO or a CSO  
Greenseams® is green infrastructure which MMSD has proactively volunteered to include .duce CSO'shelp re  
in the discharge permit as an element of its wet weather flow management program and must be included in  
and would ,We understand this argument .tment by MMSDthe permit as part of the green infrastructure inves  
of its green infrastructure commitment through %25MMSD can meet up to .like to propose a compromise  
ea We envisioned MMSD would be putting in BMPs in the service ar .but not more than that ,GreenSeams  
not that they would be implementing practices to prevent flooding upstream ,when we devised this requirement  
.of the service area

that the EPA comment letter included an ,correctly so ,The draft Notice of Final Determination points out .9  
the response to this comment does not address the ,However .pplicable reference to the State rulesina  
s criteria 'ensure that Wisconsin ,set at the FAV ,Does the ammonia limit :substantive issue behind the comment  
I don't understand what is the .(3)102.05These criteria are in NR ?for the performance of mixing zones are met  
We can talk after I get a chance to talk this over with the limit calculator I .concern with this limit calculation  
e comment gets at when we use acute Th .We can see what Jackie says about this .don't know what a FAV is  
.how to take into account a mixing zone when the requirement is based on acute values/values and if

The revised draft permit and the draft Notice of Final Determination do not respond to the EPA .10  
The .he concentration at which compliance with the chlorine WQBELs would be determinedcomment on t  
EPA recommended a value ;L as the compliance evaluation value/ug 100The permit sets .L/ug 38WQBEL is  
.There is no defined MDL value .136CFR 40the MDL of the most sensitive method in 3.18not greater than  
l is a reasonable value for compliance /ug100 .l/mg 0.5to 0.3Commonly identified MDL values are  
.We are checking with technical staff here on this .evaluation

line up with the Federal requirements for standard %100do not The general conditions in the permit .11  
In " ,We suggest that a sentence be added at the end of the introductory paragraph that states .permit conditions  
40conditions enumerated in addition to these standard requirements the permittee must also comply with the  
Further changes should be .The permit meets Wisconsin administrative rule requirements ".122.41CFR  
which is at the beginning of )Can we just add into this sentence .discussed by managers at a program level  
uirements not specifically outlined in the Standard Requirement section of this permit can be Req" :(10Section  
there may need to be a call with ,If not "122.41CFR 40and (2)205.07and NR (1)205.07NR .found in ss  
.DNR management/EPA